

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DISH NETWORK L.L.C.
and **NAGRASTAR LLC**,

Plaintiffs,

v.

**DEBRA HENDERSON, JOHN
HENDERSON, and BOOM MEDIA LLC**,

Defendants.

Case No. 5:19-CV-1310 MAD/ATB

DECLARATION OF KEVIN MCMONNIES

I, Kevin McMonnies, of Englewood, Colorado declare as follows:

1. I make this declaration based on personal knowledge and, if called upon to testify, would testify competently as stated herein.

2. I am the Director of Field Security and Investigations for Plaintiff NagraStar LLC (“NagraStar”). I have been employed with NagraStar since 2006. NagraStar provides encryption technology that protects its customer’s satellite communications of television programming from piracy, i.e., unauthorized reception, retransmission, or viewing. I am responsible for NagraStar’s anti-piracy investigations and support of legal actions worldwide, including this case.

Plaintiffs’ Business

3. NagraStar’s co-plaintiff in this case, DISH Network L.L.C. (“DISH”), is the fourth largest pay-television provider in the United States and serves millions of subscribers nationwide. DISH contracts for and purchases the right to broadcast the television programming on its platform from networks, motion picture distributors, pay and specialty broadcasters, sports leagues, and other rights holders. DISH’s subscribers have access to hundreds of channels, including movies, sports programs, and general entertainment services (“DISH Programming”).

4. NagraStar provides conditional access security technology that is used to authorize a DISH subscriber's receipt of DISH Programming. DISH Programming is uplinked to satellites as an encrypted communication, and then retransmitted from those satellites to subscribers that (1) purchased from DISH the right to view such programming, and (2) have the equipment necessary to receive and decrypt DISH's satellite communications, including a DISH satellite receiver and NagraStar smart card that convert DISH's encrypted satellite communications into viewable DISH Programming that is displayed on the attached television of the authorized DISH subscriber.

Defendants' Business

5. Defendants are involved in operating illicit streaming services known as MFG TV, Beast TV, Nitro TV, Murica Streams, Epic IPTV, Vader Streams, and OK2, which capture DISH's satellite communications of television programming and rebroadcast that DISH Programming to customers that purchased the equipment needed to access these services from Defendants' website located at <https://boommedia.org> ("Boommedia.org") (the "Rebroadcasting Scheme").

6. Boommedia.org is currently registered to Domains By Proxy, LLC, which provides privacy protection services that enable the owner of domain name to mask their identity. The most recent DomainTools Whois record for Boommedia.org is attached as Exhibit 1. The last identified registrant of Boommedia.org – prior to the privacy protection services taking effect – is Defendant John Henderson, as shown in the historical Whois record included in Exhibit 1.

7. Boommedia.org previously had a companion website located at <https://topiptv.com> that is no longer operational. Emails received from Boommedia.org identified <https://topiptv.com> as "Our BRAND NEW Site," as shown in the example correspondence attached as Exhibit 2. The topiptv.com domain name is currently for sale and was previously registered to Domains By Proxy, LLC, during which time the domain name re-directed visitors to Boommedia.org, as shown in the

Whois records attached as Exhibit 3.

8. Codes were offered for sale at Boommedia.org that enable customers to use a set-top box or other internet-enabled device to access the streaming services known as MFG TV, Beast TV, Nitro TV, Murica Streams, and Epic IPTV (hereinafter, "Device Codes"). Attached as Exhibit 4 are screenshots from Boommedia.org providing an overview of the services. Device Codes for accessing the Vader Streams service were previously offered for sale at Boommedia.org, as shown in the screenshots attached as Exhibit 5. Devices Codes for the Vader Streams, Beast TV, Nitro TV, Epic IPTV, and OK2 services were also previously offered for sale on the companion website located at <https://topiptv.com>, which redirected to the Boom Media checkout page to complete the purchase, as shown in the screenshots attached as Exhibit 6.

9. Devices Codes were sold on Boommedia.org for approximately \$10 to \$20 for each month of access, depending upon the service selected by the purchaser, as shown in Exhibits 4-6. Payments were accepted using the payment processing services provided by PayPal, Venmo, Zelle, CashApp, and Facebook Payments, in addition to virtual currency such as Bitcoin and Ethereum, as shown in Exhibit 5.

10. NagraStar tasked Toltec Investigations LLC and Lynx Investigations LLC to make undercover purchases of Device Codes and set-top boxes at Boommedia.org. These purchases are identified in the declarations of Michael Jaczewski and Gwendolyn Arguello and attached exhibits. The declaration and exhibits evidence that payments were accepted at Boommedia.org using the payment processing services provided by Apple Pay, Android Pay, and Authorize.net, in addition to those payment processing services identified in the preceding paragraph.

11. Device Codes were offered for sale on Boommedia.org as early as April 12, 2017, as shown in the screenshots attached as Exhibit 7 that were obtained from the Internet Archive at

<https://web.archive.org/web/20170412095253/http://boommedia.org/>. Device Codes continued to be offered for sale on Boommedia.org when this action was filed on October 29, 2019. NagraStar discovered on or about November 19, 2019 that Boommedia.org had been taken off-line.

12. Boommedia.org had an icon that linked to <https://www.youtube.com/c/boomkodi>, which is described as “[t]he official Youtube Channel for Boom Media” and had 23.8K subscribers as of October 16, 2019, as shown in the screenshots attached as Exhibit 8 (the “Boom YouTube Channel”). Defendant John Henderson appears in videos posted to the Boom YouTube Channel, wherein he conducts Q&A sessions with existing and prospective customers concerning the MFG TV, Beast TV, Nitro TV, Murica Streams, Epic IPTV, Vader Streams, and OK2 services. There were approximately 250 videos posted to the Boom YouTube Channel, as shown in Exhibit 9.

13. A video entitled “Vader Streams Shut Down ...” was added to the Boom YouTube Channel on May 3, 2019, as shown in the screenshot attached as Exhibit 10. The video is currently available at <https://www.youtube.com/watch?v=pjX9czVGgmU>. A transcript prepared from the “Vader Streams Shut Down” video is attached as Exhibit 11, wherein Mr. Henderson states:

a. At mark 16:45: “Every single one of them eventually is going to go down. So you have two choices, you either take the risk to save a little money long term, or you don’t. ... [Y]ou could go to cable and get 10% of the content and paid four times the price You have to put it in perspective of what it is you’re buying.”

b. At mark 11:03: “You guys are buying pirated streams, this shit is not Hulu, it’s not Netflix, it’s pirated f**king streams.” ... “[I]t’s no different than buying f**king knockoff shoes. ... It’s black market shit”

c. At mark 46:18: “[P]eople out there ... had really professional and profound 100% guarantee and 100% uptime websites and I think it gave people the impression that this shit is completely legit and like cable. ... You might as well have bought this shit off of a back alley when you’re dealing with guys like me. We’ve been straight up with you, the risk is real, it always has been real.”

d. At mark 31:49: “You can say, ‘All these people are buying these pirated streams or whatever, they would’ve been buying Dish.’ You don’t f**king know that.”

e. At mark 6:03: “I got hit with a f**king phone call from Dish Network ... My stance is, f**k you sue me. You want to f**king take me down you better bring me to court because I’m not just f**king rolling over, I never will, and even if that day happens I’m going to dump a f**king cup of water on my computer and f**king take whatever you can find.”

14. A video entitled “Call To Action ...” was added to the Boom YouTube Channel on June 3, 2019, as shown in the screenshot attached as Exhibit 12. The video is currently available at <https://www.youtube.com/watch?v=qBNEwdIPRWI>. A transcript prepared from the “Call To Action ...” video is attached as Exhibit 13, where Mr. Henderson states:

a. At marks 00:51–1:17: “[W]hat’s happened is, one of the processors we’ve been using has scammed pretty much everyone out of all their money. ... It’s called VRSimPay. ... I think we used it from February to last month.”

b. At marks 2:42–3:57: “[A]s of right now, they have fifty thousand dollars of our money.” ... [T]hirty thousand of that is money we put in for credits. ... We spend money on the credits to buy the accounts that you buy from us.”

c. At mark 4:29: “If you bought from us, and you used that processor, find that charge in your bank or your card. Call it, file a chargeback, get your money back. I’m not asking you to give me the money back. Keep the money, keep the account. I want to put these f**ks out of business.”

d. At mark 19:32: “‘You can dispute any charge with your bank or CC.’ It’s actually longer than 90 days. I think a lot of them are up to six months or even a year now. Especially if you just be like, ‘Yo, I got scammed. I ordered this and I never received the product.’ Like, that should be the approach you take.”

e. At mark 55:00: “Chargeback on f**king V-Pay. Get your money back from them. Not asking you to send me the money or do anything with it. Keep it, keep the service, let’s put them out of business.”

Plaintiffs’ Irreparable Harm

15. DISH loses revenues and market share when persons receive DISH Programming using Defendants’ Device Codes, rather than purchasing that DISH Programming through DISH. Similarly, NagraStar loses revenues that are ordinarily gained from the sale of receiving equipment to authorized DISH subscribers. Determining the amount of lost revenues is impractical because

the following, for example, are generally unknown:

- a. the number of users benefitting from each Device Code (the Device Codes sold by Defendants allowed up to two IP addresses to access DISH Programming, as shown in Exhibits 4-6, meaning the Device Codes could have been shared among users);
- b. how many of those users would have purchased a subscription and receiving equipment from Plaintiffs to access the DISH Programming;
- c. how long those users would have remained DISH subscribers; and
- d. the specific DISH Programming received by those users to identify the cost of the corresponding DISH subscription package and any PPV or extra programming fees.

16. The Rebroadcasting Scheme also causes damage to Plaintiffs' business reputations and goodwill. Plaintiffs' reputations are built on and depend on delivering DISH Programming to authorized subscribers in a secure manner. Defendants, by selling Device Codes that assist their customers in receiving DISH Programming without authorization, harm Plaintiffs' reputations and interfere with Plaintiffs' contractual and prospective business relationships, including relationships with channel providers that license programming to DISH and customers of NagraStar's security technology. Calculating Plaintiffs' reputational damage and lost sales due to the piracy facilitated by Defendants is inherently difficult, if not impossible.

Prior Cases

17. Attached as Exhibit 14 is a true and correct copy of orders entered in the case *DISH Network L.L.C. v. Droid Tech. LLC*, No. 8:19-cv-672-WFJ-AEP (M.D. Fla.).

18. Attached as Exhibit 15 is a true and correct copy of orders entered in the case *DISH Network L.L.C. v. SET Broadcast LLC*, No. 8:18-cv-01334-VMC-AAS (M.D. Fla.).

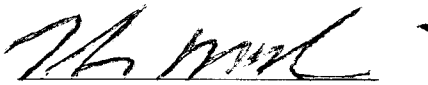
19. Attached as Exhibit 16 is a true and correct copy of a judgment entered in the case

DISH Network L.L.C. v. One Box TV, LLC, No. 8:19-cv-2147-T-30SPF (M.D. Fla.).

20. Attached as Exhibit 17 is a true and correct copy of a judgment entered in the case *DISH Network L.L.C. v. Dillion*, No. 3:12-cv-00157-CAB-KSC (S.D. Cal.).

21. Attached as Exhibit 18 is a true and correct copy of a judgment entered in the case *DISH Network L.L.C. v. Whitcomb*, No. 3:11-cv-0333 W (RBB) (S.D. Cal.).

I declare under penalty of perjury that the foregoing is true and correct. Executed on April 21, 2020.


Kevin McMonnies